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AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. Appln. No. 09/929,066

REMARKS

The present invention relates to a superoxide scavenger and preparation thereof. The present invention also relates to a beverage containing the superoxide scavenger.

In this Amendment, claims 1 and 3 have been amended to replace “grain” with --bean--. Claims 2 and 4 have been amended to replace “bean” with --soybean--. These amendments are supported by the specification at, for example, page 2, 4th paragraph and page 3, last paragraph.

Claims 1 and 3 have been amended to recite a step of --removing said bean from said cooled bean liquor to obtain an initial bean liquor--. This amendment is supported by the specification at, for example, page 3, last paragraph.

Claims 7 and 8 have been added as new claims. These new claims are supported by the specification at, for example, page 4, lines 15-18.

Claims 2 and 4 have been amended to be also dependent from new claims 7 and 8, respectively. These amendments are supported by the specification at, for example, page 4, lines 15-18.

Claim 5 has been cancelled.

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No new matter has been added and thus, entry of the Amendment is respectfully requested. Upon entry of the Amendment, claims 1-4 and 7-8 will be all the claims pending in the application.

The rejections with respect to which the amended claims should be considered are discussed below.

Claims 1, 3 and 5 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

In particular, it was asserted: (1) that the recitation of “bean or soybean” renders the claims indefinite because the terms “bean” and “soybean” overlap in scope; (2) that the claims are indefinite for allegedly omitting essential elements as to how to “obtain” the composition from the “specific liquid;” and (3) that some essential steps are omitted in the recited process, i.e., removal of the grain from the grain liquor to obtain an initial liquor (pages 3-5 of the specification).

Applicants respectfully submit that the claims as amended herein are not indefinite. In this Amendment, Applicants have amended claims 1 and 3 to recite --bean--, and claims 2 and 4 to recite --soybean--, as suggested by the Examiner. Applicants have also amended claims 1 and 3 to delete the recitation of “specific liquid,” and to recite an additional step of --removing said bean from said cooled bean liquor to obtain an initial bean liquor--, as suggested by the Examiner. Applicants have also cancelled claim 5.

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In view of the above, the Examiner is respectfully requested to reconsider and withdraw the rejection.

At page 4 of the Office Action, claims 1-5 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by, or alternatively under § 103(a) as allegedly obvious over Qian (CN 1,123,833) for the same reasons as set forth in the previous Office Action. At page 5 of the Office Action, claims 1-5 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by, or alternatively under § 103(a) as allegedly obvious over Kakeko (JP 57-125669) for the same reasons as set forth in the previous Office Action.

Applicants respectfully traverse these prior art rejections. Applicants respectfully submit that fermentation of sugars and starches to produce alcohol occurs generally under an anaerobic environment, i.e., with little or no oxygen. On the other hand, in the present invention, oxygen is supplied; e.g., the liquor is agitated at intervals during the course of fermentation to supply oxygen. See page 5 of the specification, second paragraph.

Neither Qian nor Kakeko discloses or suggests the present invention. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection.

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At page 6 of the Office Action, claims 1-5 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting, as allegedly being unpatentable over claims 1-10 of copending Appln. No. 09/929,064.

Applicants respectfully traverse the provisional rejection. The claims in Appln. No. 09/929,064 are directed to a cosmetic comprising a superoxide scavenger. On the other hand, the presently claimed invention is directed to a superoxide scavenger and a beverage comprising such a superoxide scavenger.

Cosmetics and beverages belong to two different categories of subject matter. Accordingly, Applicants submit that it would not have been obvious to a person of ordinary skill in the art that a component of a cosmetic may be used in a beverage. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the provisional rejection.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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WASHINGTON OFFICE



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PATENT TRADEMARK OFFICE

Date: May 27, 2003

APPENDIX
VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 5 is canceled.

The claims are amended as follows:

1. (twice amended) A superoxide scavenger comprising a composition obtained from a specific liquid, wherein said specific liquid composition is prepared by:

boiling a grain-bean with a liquid to obtain a grain-bean liquor;

cooling said obtained grain-bean liquor;

removing said bean from said cooled bean liquor to obtain an initial bean liquor;

adding a yeast into said cooled grain initial bean liquor;

leaving said grain initial bean liquor with said yeast while supplying oxygen thereto; and

sterilizing the resulting liquid by heating to obtain said specific liquid,

wherein said grain is a bean or soybean.

2. (twice amended) A superoxide scavenger as defined in claim 1, wherein said grain-bean is a bean soybean.

3. (twice amended) A beverage containing a superoxide scavenger in which said superoxide scavenger comprises a composition obtained from a specific liquid, wherein said specific liquid composition is prepared by:

boiling a grain-bean with a liquid to obtain a grain-bean liquor;

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cooling said obtained ~~grain-bean~~ liquor;
removing said bean from said cooled bean liquor to obtain an initial bean liquor;
adding a yeast into said ~~cooled grain~~-initial bean liquor;
leaving said ~~grain~~-initial bean liquor with said yeast while supplying oxygen thereto; and
sterilizing the resulting liquid by heating to obtain ~~said specific liquid~~,
~~wherein said grain is a bean or soybean.~~

4. (twice amended) A ~~superoxide scavenger~~ beverage as defined in claim 3 wherein
said ~~grain-bean~~ is a beansoybean.

Claims 7 and 8 are added as new claims.